

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re: Martin R. Willard et al. Confirmation No.: 8579  
Serial No.: 10/750,586 Examiner: Christopher P. Bruenjes  
Filing Date: December 29, 2003 Group Art Unit: 1772  
Docket No.: 1001.1714101 Customer No.: 28075  
For: CATHETER INCORPORATING AN IMPROVED POLYMER SHAFT

Mail Stop Appeal Brief - Patents  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF UNDER 37 C.F.R. § 41.41**

**CERTIFICATE FOR ELECTRONIC TRANSMISSION:**

The undersigned hereby certifies that this paper or papers, as described herein, are being electronically transmitted to the U.S. Patent and Trademark Office on this 20th day of November 2007.

By Kathleen L. Boekley  
Kathleen L. Boekley

Dear Sirs:

Pursuant to 37 C.F.R. § 41.41, Appellants hereby submit this Reply Brief in response to the Examiner's Answer of September 24, 2007. Remarks begin on page 2.

## R E M A R K S

The following argument addresses the points raised in the Response to Arguments of the Examiner's Answer. The main body of arguments in the Examiner's Answer appears to be a word-for-word copy of the § 103 rejection of the February 14, 2006 Office Action which has been addressed in detail in the Appeal Brief and will not be repeated here. This Reply Brief should therefore be read together with the Appeal Brief.

The point of contention is over what Itou et al. teach when Itou et al. state that "it is possible for the first and second resin layers to be formed of the first resin material and the second resin material that are melted at least partially so as to be mixed or fused and, then, solidified." Itou et al. at column 4, lines 26-30. The Examiner argues that this teaches the "homogenously blended" limitation of the claims. Appellants, however, point out that the process described by Itou et al. does not necessarily result in a catheter shaft having homogenously blended components. As a result, all the elements of the claims are not taught or suggested by the prior art.

The Examiner argues that "Applicant fails to teach the degree of homogeneity required by the limitation 'homogeneously blended', therefore the broadest reasonable interpretation of 'homogeneously blended' would include uniformly mixed as taught by Itou." This line of argument implicitly recognizes that "uniformly mixed" is something less than the full degree of "homogenously blended" (else why would the failure to teach the degree of homogenous blending matter?) while failing to appreciate what "homogenously blended" means. "Homogenous blending", like "hermetically sealed", is a state not susceptible to degrees. A flask is either hermitically sealed or it is not; it makes no sense to say that the flask is partially hermetically sealed. Similarly, a mixture is either homogenously blended or it is not; it cannot be partially homogenously blended. (The lesser degrees of blending may be described using terms like heterogeneously blended, partially blended or barely blended.) The broadest reasonable interpretation of "homogenously blended" is therefore much narrower than that which the Examiner has adopted.

Thus when Appellants argue that Itou et al. fail to teach any mechanical agitation, this is not an argument that mechanical agitation is necessarily required for homogenous blending; it is an effort to point out that Itou et al. teach no processes that necessarily result in homogenous blending. In other words, homogenous blending is not inherent in any process described by Itou

et al. nor does any catheter described by Itou et al. inherently possess homogenously blended portions as claimed.

Because "homogenously blended" has a narrow definition and because Itou et al. do not describe methods that inherently encompass homogenous blending or catheters that inherently have homogenously blended portions as claimed, Appellants respectfully maintain that the rejection is in error.

Because the combination of Itou et al. with Utsumi et al. does not teach all the limitations of the claimed invention, the Examiner has failed to establish a *prima facie* case of obviousness. As such, claims 28-43 are believed to be allowable over Itou et al. in view of Utsumi et al. For the reasons stated above and stated in the Appeal Brief, the claims 28-43 are nonobvious over Itou et al. in view of Utsumi et al., and the Examiner's rejections of these claims under 35 U.S.C. § 103(a) should be overruled.

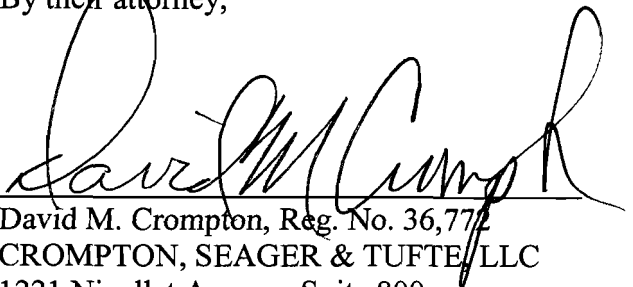
Respectfully submitted,

Martin R. Willard et al.

By their attorney,

Date: \_\_\_\_\_

11/20/07



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